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IN THE

Supreme Court of the United States

No. 931

Term, 19....

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, RADE MILKOVICH, JOVO ADAMOVICH, DELLA ZEES and DOROTHY CONWAY, individually and on behalf of all others similarly situated,

Appellants,

vs.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Appellees.

On Appeal from the Supreme Court of Pennsylvania

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Pennsylvania entered on September 29, 1965, affirming a decree of the Court of Common Pleas of Alle-

gheny County, Pennsylvania, and respectfully submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

Opinions Below

The opinions of the Supreme Court of Pennsylvania is reported at 213 Atlantic Reporter (2d) p. 80 and at 415 Pa. 28. The opinions of the Court of Common Pleas are not reported. Copies of all said opinions are attached hereto as Appendices A, B, C and D, respectively.

Jurisdiction

This suit was brought to open and set aside a *pro forma* decree merging local Pennsylvania church corporations, both by their charters affiliated with the Serbian Eastern Orthodox Diocese for the United States and Canada, an Illinois corporation, after the plaintiffs, appellants herein, obtained Diocesan recognition of their local church's continued separate existence as St. Sava Serbian Eastern Orthodox Church, in their hierarchical appeal from the action of their local officers in obtaining the merger decree. Consent to bring the action was given appellants by the Diocesan Bishop. After hearing, the Common Pleas Court entered a non-suit. On March 6, 1964, several weeks after entry of the order of non-suit, said Court entered of record an opinion holding appellants guilty of laches in failing to appeal from the *pro forma* merger decree, and that the Diocese had no legal authority to seek opening of the merger decree. Appeal was immediately taken to the Supreme Court of Pennsylvania at No. 110 March Term, 1964, reported at 415 Pa. 28, which said appeal was quashed as premature. Upon remand motion to remove the compulsory non-suit was filed in the Common Pleas

Court, argument held, and the motion denied by an opinion and order dated December 15, 1964, holding that the appeal to the Pennsylvania Supreme Court, having been a "nullity", the time for filing the motion to remove the non-suit (4 days under local court rule) had passed, and that said motion to open must be stricken as untimely. Appeal was then taken to the Pennsylvania Supreme Court at 94 March Term, 1965, wherein, on September 29, 1965, the affirmance judgment here appealed was entered. Notice of appeal herein was filed with the Pennsylvania Supreme Court on December 9, 1965. Jurisdiction of the Supreme Court to review by direct appeal is conferred by Title 28, United States Code, Sections 1257, (1) (2) and 2101 (c). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Young v. Ragen,* 337 U. S. 235; *W. U. Tel. Co. v. Commw. of Penna.,* 368 U. S. 71; *Cramp v. Bd. of Public Instruction of Orange County, Fla.,* 368 U. S. 278; *Raley v. State of Ohio,* 360 U. S. 423; *Local 333 B United Marine Div. of Intern. Longshoremen's Ass'n. v. Battle,* 342 U. S. 880; *Lovell v. City of Griffin, Ga.,* 303 U. S. 444; and *Chamberlin v. Dade County Bd. of Public Instr.,* 377 U. S. 402.

Questions Presented

(a) Should a state court enforce a hierarchical administrative church order requiring opening of a decree merging two local church corporations affiliated with the diocesan hierarchy, members of one of which said corporations successfully appealed from the merger action taken over their objection, to said diocesan hierarchy, but filed no adversary court proceedings prior to the merger?

Denied below.

(b) Where a local Pennsylvania church corporation, by the terms of its corporate charter is required to comply with the regulations, rulings and orders of the Serbian Eastern Orthodox Diocese for the United States and Canada, an Illinois corporation, are members who dissent from the majority voting to merge with a similiar local corporation, likewise affiliated, required to oppose the *pro forma* court application for a merger decree before appealing successfully to the church national assembly, so that the delay during such appeal bars their right to open the merger decree?

Affirmed below.

(c) May a discretionary state court rule of procedure be invoked for refusing to honor a hierarchical church order to dismember a local church corporation, to re-establish theretofore existing congregations, when none of the members and neither of the local church corporations disaffiliates from the hierarchy?

Affirmed below.

Provisions of the United States Constitution Involved

The Establishment and Free Exercise of Religions Clauses of the First Amendment to the Constitution, as made applicable to the States by the Fourteenth Amendment, forbidding States to handicap religious orders, as interpreted and applied in *Everson v. Board of Education*, 330 U. S. 1; *School Dist. of Abington Twp., Pa. v. Schempp*, 374 U. S. 215; *Saint Nicholas Cathedral v. Kreshik*, 363 U. S. 190, and *Watson v. Jones*, 80 U. S. 679.

Statement

The appellants are members of St. Sava Serbian Eastern Orthodox Church which, by its Pennsylvania corporate

church charter provisions, affiliates it with the national Diocese at Libertyville, Illinois, under the national Bishopric thereof. The appellees were members of St. George Serbian Eastern Orthodox Church, likewise affiliated.

In 1961, an unofficial "unity committee", not provided for in the by-laws of either local church corporation, was voluntarily set up "to discuss" the merits of merger, within the Diocese.

Without formal or hierarchical approval, the "unity committee" called for a vote for merger. Ballots were printed and distributed by mail and in person. The meeting was under domination of a violent chairman and his aggressive group. Receiving a majority of favorable ballots, the "unity committee" representatives and their counsel proceeded with a non-profit corporate merger application in the Common Pleas Court of Allegheny County, Pennsylvania.

Appellants appealed the unauthorized, unofficial and violent actions of the "unity committee" to their priest, their president, the church board, the Bishop and ultimately to the Church National Assembly, which, by official action in August, 1963, upheld them, and declared the merger proceedings void.

Pending the intra-church appeals as aforesaid, the appellees had obtained a *pro forma* merger decree, which, as amended, declares in paragraph 6-A, that the consolidated corporation, under the name Holy Trinity Serbian Eastern Orthodox Church-School Congregation of Pittsburgh, Pennsylvania, is bound:

> "1. To maintain and conduct the worship of God in conformity with the faith, doctrine and usage of the Serbian Eastern Orthodox Church, under the jurisdiction of the Serbian Eastern Orthodox Diocese for the United States of America and Can-

> ada, and subject to all the Articles of its constitution, the canons of the Church, and other decrees and directives of the Diocesan authorities at the head of which is the Bishop; * * *"

In sustaining the appeal of the appellants, the National Assembly was presided over by the Bishop, who likewise decreed the merger action by the "unity committee" a nullity.

This equity action came on for trial before Common Pleas Judge Robert Van der Voort, who after hearing the entire case, entered a compulsory non-suit, over the objection, and despite the motion of counsel for appellants for leave to file requests for fiindings of fact and conclusions of law. The Chancellor's opinion was filed after appeal, upon notice, under Rule 63 of the Pennsylvania Supreme Court.

The first appeal to the Pennsylvania Supreme Court, taken by these appellants, at No. 110 March Term, 1964, from the *entry* of a compulsory non-suit, was, on motion, quashed as being "prematurely taken"; *Kukich v. Serbian Eastern Orth. Church,* 415 Pa. 28, holding that a motion to remove the non-suit below was a prerequisite to appeal. Upon remand, such a motion forthwith filed. A rule was granted appellees by the same Common Pleas Judge requiring appellants to show cause why the motion should not be dismissed for laches, and, after argument upon said rule and answer thereto, the said judge dismissed the motion for laches, without considering the substantive merits thereof, and without passing on the federal questions involved.

The record will show that the first appeal was filed December 20, 1963, the date that the order granting the non-suit was orally made by the Court below (r. 308a). The

appeal was quashed Wednesday, July 1, 1964. On Monday, July 6, 1964, the motion to remove the non-suit was filed below, the 3rd court day after the order quashing the previous appeal.

A second appeal to the Pennsylvania Supreme Court at No. 94 March Term, 1965, very clearly raising the federal questions as the principal part of the appellants' brief. The Supreme Court entered a one line judgment: "Decree affirmed. Each side to bear own costs." None of the federal questions were thus determined.

The motion to open the non-suit had set out, *inter alia,* the illegality of the court's decree refusing to honor the hierarchical autonomy of the Diocese, its duly constituted Bishop and their official canonical determination of the separate existence of the St. Sava congregation. It was pointed out that interference in the internal affairs of a church was violative of the Constitution as applied to the States. It was also pointed out that the *pro forma* merger decree, entered in a non-adversary proceeding, was not such "final judgment" as to warrant refusal to open after delay due to exhaustion of church remedies resorted to by appellants. All these questions were ignored both in the Common Pleas and in the Supreme Court.

The Federal Questions Involved are Substantial

The Pennslyvania Courts have ignored the holding of *Kedroff v. St. Nicholas Cathedral,* 344 U. S. 94; *Kreshik v. St. Nicholas Cathedral,* 363 U. S. 190; *Watson v. Jones,* 80 U. S. 679; *Chamberlin v. Dade County Bd. of Public Instr.,* 377 U. S. 402, etc., adhering to a determination that the Diocesan hierarchy's decision upholding appellants cannot be recognized, and is not enforceable in the state courts.

Especially since the *pro forma* decree of merger, unless opened, will deprive appellants of substantial church property, including their church building and cemetery, contrary to the constitutional and decisional mandates supporting ecclesiastical autonomy, should jurisdiction be assumed by the Supreme Court.

The refusal of the Pennsylvania courts to acknowledge the independence of the church to administer its own canonical affairs, including recognition of its own affiliates in a manner provided for in the church charters, by ignoring the federal question put to them, evades the Constitution and the law.

By the device of enforcing technical local court rules requiring appeal from a *pro forma* decree, and "timely" motion to remove non-suit, the Pennsylvania courts have ignored the requirements of exhaustion of remedy within the church, and its authority to decide the merits of the appellants' claims, which conflict of authority between the church and state should be resolved by application of the overriding Federal constitutional and decisional law.

Unless the Supreme Court assumes jurisdiction, the Federal rights of appellants and their church will not be recognized in Pennsylvania.

Conclusion

WHEREFORE, it is respectfully submitted that substantial and important Federal questions are involved which should be reviewed by the Supreme Court.

Respectfully submitted,

HARRY ALAN SHERMAN,
Counsel for Appellants.

APPENDICES

Appendix A

SUPREME COURT OF PENNSYLVANIA

Sept. 29, 1965.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, JOSEPH WERLINICH, RADE MILKOVICH, JOVE ADAMOVICH, DELLA ZEES, and DOROTHY CONWAY, individually and on behalf of all others similarly situated,
Appellants,

v.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH and NICHOLAS R. STONE.

Appeal No. 94 March Term, 1965 from the Decree of December 20, 1963, of the Court of Common Pleas of Allegheny County at No. 3690 October Term, 1962, Non-Suiting the Cause; Robert Van der Voort, Judge.

Harry Alan Sherman, Pittsburgh, for appellants.

Robert Rade Stone, George Raynovich, Jr., Pittsburgh, for appellees.

Before Bell, C. J., and Musmanno, Jones, Cohen, Eagen, O'Brien, and Roberts, JJ.

Per Curiam.

Decree affirmed. Each side to bear own costs.

Appendix B

SUPREME COURT OF PENNSYLVANIA

July 1, 1964.

415 Pa. 28.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, JOSEPH WERLINICH, RADE MILKOVICH, JOVE ADAMOVICH, DELLA ZEES, and DOROTHY CONWAY, individually and on behalf of all others similarly situated,
Appellants,

v.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,
Appellees.

EAGEN, Justice.

In this action in equity, the chancellor entered a compulsory nonsuit. No motion to remove or set aside the judgment was entered below, but instead an appeal was filed directly to this Court. The appeal was prematurely taken and must be quashed.

(1) An appeal does not lie from the entry of a judgment of nonsuit but rather from the refusal to take it off. Nazareth F. & M. Co. v. Marshall, 257 Pa. 489, 101 A. 848 (1917); McDonald v. Babcock, 269 Pa. 68, 112 A. 29 (1920). This applies to actions at law as well as in equity. See, Pa. R. C. P. Rule 1512, 12 P. S. Appendix. Under the Act of March 11, 1875, P. L. 6, § 1, 12 P. S. § 645, which is still extant, it is required that a motion to set aside the

judgment of nonsuit be first made to the court *en banc* to give the court an opportunity to reconsider the evidence before the case is removed to the appellate court. The writ of error lies *only* to the refusal of the court to set aside. Haverly v. Mercur, 78 Pa. 257 (1875); Bausbach v. Reiff, 237 Pa. 482, 85 A. 762 (1912); Nazareth F. & M. Co. v. Marshall, *supra;* Dellacasse v. Floyd, 332 Pa. 218, 2 A. 2d 860 (1938).

(2) Plaintiffs-appellants maintain that the authority to enter a compulsory non-suit is strictly statutory and that the chancellor lacked the power to enter such a judgment, after having heard evidence of the defendants. See Jordan v. Sun Life Assur. Co. of Canada, 366 Pa. 495, 77 A. 2d 631 (1951). Assuming the situation thus advanced is factually correct, it would in no manner affect plaintiffs-appellants' obligation to pursue statutorily required procedure in attacking the judgment, or correct the error in prematurely filing this appeal.

A close examination of the record discloses additional fallacy in the above contention. When plaintiffs-appellants' case was finished except for the testimony of a vital witness who was out of the state and unavailable, the court continued the hearing and fixed a subsequent date for the accommodation of this witness. After three such dates for hearing had been scheduled, and two months had passed without this testimony being available, the chancellor in the interests of expediency directed that the defendants proceed without prejudice and reserving the right to apply for a compulsory nonsuit, when the plaintiffs-appellants' testimony was in fact completed. To this, all counsel agreed. It was after the plaintiffs had completed their case in chief that the judgment was entered without consideration being given to the evidence of the defendants.

Under such circumstances, the chancellor clearly had the power to enter the compulsory nonsuit.

Appeal quashed. Costs on the appellants.

BELL, Chief Justice.

I dissent.

Appendix C

IN THE
COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA.

No. 3690 October Term, 1962.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, RADE MILKOVICH, JOVO ADAMOVICH, DELLA ZEES, and DOROTHY CONWAY, individually and on behalf of all others similarly situated,

Appellants,

vs.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Appellees.

OPINION.

(Filed in Appearance Docket March 6, 1964.)

On the South Side in the City of Pittsburgh, there were two separate congregations of the same church, that is,

Appendix C.

the St. Sava Serbian Eastern Orthodox Church and School Parish of Pittsburgh, Pennsylvania, and the St. George Serbian Orthodox Church of Pittsburgh, Pennsylvania. Before 1927, these two congregations had been one and the same church, but the schism occurred in 1927, as a result of which the two churches were formed. The members of each of these congregations had formed separate corporations. These corporations held the title to the real and personal property of the respective churches.

For many years there had been efforts to rejoin these two congregations and in 1961, a unity committee composed of members of both congregations was formed. As a result of the efforts of the unity committee, meetings were held of the members of each church and by a majority vote each congregation approved a merger of the two churches.

Pursuant to the will of the two churches, as expressed in these meetings, application under the non-profit corporation law of the Commonwealth of Pennsylvania was made to this Court to consolidate these two existing corporations. On December 4, 1961, a Decree of Consolidation was made by the Court joining the two churches. The name given to the new corporation was Serbian Eastern Orthodox Church of Pittsburgh, Pennsylvania. No objections were made to this Decree nor was any appeal taken therefrom. By application in October of 1962, to amend the name of the consolidated church its name was changed, by a Decree on October 5, 1962, from the Serbian Eastern Orthodox Church of Pittsburgh, Pennsylvania, to the Holy Trinity Serbian Eastern Orthodox Church-School Congregation of Pittsburgh, Pennsylvania. No objection

was made to the entering of this Decree nor was any appeal taken therefrom.

On September 15, 1962, some of the members of the old St. Sava Congregation filed a Complaint in Equity claiming that the consolidation of the two church corporations was improperly done and asked that the consolidation be declared void, that a trustee be appointed and that an accounting be had. During a lengthy trial upon the matter, there was no proof that there was any impropriety in the manner in which the two corporations had been consolidated. When the Plaintiffs failed to produce any evidence of any irregularity in the consolidation proceedings, they then devoted a great deal of time to try and impeach the written diocesan consent which had been obtained to the amendment of the Articles of Consolidation changing the name of the consolidated church. There is no allegation in the Complaint that there was any defect in the diocesan consent.

What the Plaintiffs were belatedly attempting to do was to try to upset that which the civil law had properly accomplished, that is, the consolidation of these two churches, by the application of canonical regulations of the Serbian Eastern Orthodox Church of the United States of America and Canada. Even if the Plaintiffs' legal position had been properly pleaded (it was in fact not pleaded at all), the canonical regulations while sufficient to control the spiritual matters of a church congregation, cannot control the proceedings of the members which are made, done and confirmed in accordance with the civil law of the Commonwealth of Pennsylvania.

Appendix C.

There being insufficient evidence, after drawing all in-
rences most favorably to the Plaintiffs, presented by the
laintiffs in support of their claim and their evidence
owing clearly that the Plaintiffs were guilty of laches,
e Court for these reasons, granted the Defendants' Mo-
on for a Compulsory Non-Suit at the close of the Plain-
ffs' case.

BY THE COURT,

ROBERT VAN DER VOORT.

Appendix D

IN THE

COURT OF COMMON PLEAS

OF ALLEGHENY COUNTY, PENNSYLVANIA.

No. 3690 October Term, 1962.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, JOSEPH WERLINICH, RADE MILKOVICH, JOVE ADAMOVICH, DELLA ZEES, and DOROTHY CONWAY, individually and on behalf of all others similarly situated,

Plaintiffs,

VS.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Defendants.

OPINION.

(Filed December 15, 1964.)

Before: VAN DER VOORT and ALPERN, JJ.

VAN DER VOORT, J.:

George Kukich and others representing a dissident group in the Serbian Eastern Orthodox Church had brought an Action in Equity against the Church complaining that the merger of two branches of the Church was improperly accomplished. When the Plaintiffs failed to establish a *prima facie* case the Chancellor granted the Defendants' Motion for a Compulsory Non-Suit.

Appendix D.

Plaintiffs took an immediate appeal directly to the Supreme Court of Pennsylvania at No. 110 March Term, 1964. The Supreme Court on July 1, 1964, dismissed the appeal for the reason that no appeal lies directly from the granting of a Motion for Compulsory Non-Suit. On July 6, 1964, Plaintiffs filed a Motion "to Remove Compulsory Non-Suit and to Vacate Decree."

On July 9, 1964, upon petition of Defendants a rule was granted to show cause why Plaintiffs' Motion to Remove Compulsory Non-Suit and to Vacate Decree should not be stricken. Defendants filed an Answer to the Petition to Strike-off but there are no issues of fact raised by the answer. The question before the Court *en Banc* is whether or not the Motion to Remove Compulsory Non-Suit and to Vacate Decree is properly filed. The Motion which has been filed is in reality solely one to take off a judgment of Compulsory Non-Suit although labeled in part as a Motion "to Vacate Decree". There is statutory authorization for the entry of a judgment of non-suit and for a motion to set such judgment aside in the Act of March 11, 1957, P. L. 6, § 1, 12 P. S. 645. The statute sets no time in which motions to take off judgment of compulsory non-suit must be made. The Rules of the Common Pleas Court of Allegheny County provide, among other things, as follows:

> "e. Motions to take off judgments of compulsory non-suit shall be filed within four (4) days from entry." (Rule 20 e.)

A similar question arose in North Hampton County and was considered by the Superior Court of Pennsylvania in the case of Edelman v. Moser, 60 Pa. Super. 637 (1915). The Court upheld the Rule of the Court of Common Pleas

of North Hampton County requiring that all motions to set aside a non-suit shall be filed within five (5) days after verdict. In that case the Court said, among other things, at Page 641:

> "As was stated in Harvey v. Pollock, 148 Pa. 534, the application to take off a nonsuit should be made within the proper time. When the plaintiff allowed the nonsuit to stand for the length of time above indicated and upon application to take it off presented no reasons for asking the grace of the court to relieve him from the application of the rule of court, he was not entitled as a matter of right to have his motion granted even if the reasons urged may have had merit in them."

The Plaintiffs take the position that the appeal which they took to the Supreme Court of Pennsylvania acts as a supersedeas and prevents time from running against them with respect to the Motion to take off the Judgment of Compulsory Non-suit. There is a statutory provision as to when appeals operate as supersedeas in the Act of May 19, 1897, P. L. 67, § 12, as amended, 12 P. S. 1149. This statute insofar as it relates to cases of the type of the one at bar provides that an appeal shall operate as a supersedeas only when ordered by the Court below or the Appellate Court or any Judge thereof either by general rule or special order. Based upon statutory provisions alone the appeal did not act as a supersedeas. The case law of Pennsylvania holds that an appeal to the Supreme Court of Pennsylvania improperly taken is a nullity thus this appeal which did not properly lie would have no effect on the time in which to file a Motion to take off the Judgment of Compulsory Non-suit. For these reasons the rule will be made absolute and the Motion to Remove Compulsory Non-

suit and Vacate Decree filed by the Plaintiffs will be stricken.

ORDER.

AND NOW, December 15th, 1964, after argument and consideration of briefs filed, the Rule to Show Cause why Plaintiffs' Motion to Remove Compulsory Non-suit and to Vacate Decree should not be stricken is made absolute and Plaintiffs' Motion to Remove Compulsory Non-suit and to Vacate Decree is stricken from the record.

BY THE COURT,
ROBERT VAN DER VOORT.

Eo die, Exceptions noted to Plaintiffs and bill sealed.

BY THE COURT,
ROBERT VAN DER VOORT. (Seal)

Notice of Appeal to the Supreme Court of the United States

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 94 March Term, 1965.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, RADE MILKOVICH, JOVO ADAMOVICH, DELLA ZEES and DOROTHY CONWAY, individually and on behalf of all others similarly situated,

Appellants,

vs.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Appellees.

I. Notice is hereby given that George Kukich, Alexander G. Brnilovich, Stanley Ivosevich, Rade Susnjar, Rade Milkovich, Jovo Adamovich, Della Zees and Dorothy Conway, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Pennsylvania affirming the decree of the Court of Common Pleas of Allegheny County, Pennsylvania, entered in this equity action on September 29, 1965.

Notice of Appeal to the Supreme Court of the United States.

This appeal is taken pursuant to 28 U. S. C. A., par. 1257 (1) and (2) and 28 U. S. C. A., par. 2101 (e); in the alternative, pursuant to 28 U. S. C. A., par. 1257 (3).

II. The Prothonotary will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript of record (a) all docket entries in the Pennsylvania Supreme Court and in the Common Pleas Court; (b) all opinions and decrees of the Supreme Court and of the Common Pleas Court; (c) briefs and record at No. 110 March Term, 1964, herein, made part of the record herein; (d) supplemental briefs and supplemental record filed at the within number and term.

III. The following questions are presented by this appeal:

(a) Should a state court enforce a hierarchical administrative church order requiring opening of a decree merging two local church corporations affiliated with the diocesan hierarchy, members of one of which said corporations successfully appealed from the merger action taken over their objection, to said diocesan hierarchy, but filed no adversary court procedings prior to the merger.

Denied below,

(b) Where a local Pennsylvania church corporation, by the terms of its corporate charter is required to comply with the regulations, rulings and orders of the Serbian Eastern Orthodox Diocese for the United States and Canada, an Illinois corporation, are members who dissent from the majority voting to merge with a similar local

corporation, likewise affiliated, required to oppose the *pro forma* court application for a merger decree before appealing successfully to the church national assembly, so that the delay during such appeal bars their right to open the merger decree?

Affirmed below

(c) May a discretionary state court rule of procedure be invoked for refusing to honor a hierarchical church order to dismember a local church corporation, to re-establish theretofore existing congregations, when none of the members and neither of the local church corporations disaffiliates from the hierarchy?

Affirmed below.

HARRY ALAN SHERMAN,
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